

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

CONVERGEN ENERGY LLC, et al.,

Plaintiffs,

v.

Case No.: 1:20-CV-03746 (LJL)

STEVEN J. BROOKS, et al.,

Defendants.

DECLARATION OF VAIDHYANATHAN SWAMINATHAN
SEPTEMBER 3, 2020

Vaidhyanathan Swaminathan, states as follows:

1. I am a Forensic Examiner at Digital Intelligence, Inc. / DIFS, LLC (DI). I received my undergraduate degree in Electronics and Instrumentation Engineering from Madras Institute of Technology, Anna University. In 2020, I received a Master of Science in Cyber Security Engineering from the University of Southern California. I am over the age of twenty-one years and I am competent to testify to the matters herein.

2. I have personal knowledge of all the matters stated in this declaration.

3. On July 2, 2020, DI was engaged by Kohner, Mann & Kailas, S.C. on behalf of Steven Brooks to provide forensic services related to digital evidence in this matter.

4. On July 6, 2020, DI forensically obtained complete copies of Steven Brooks' Gmail account (stevebrooks17@gmail.com) and iPhone 8 (Serial Number: FFMXFAY1JC67).

5. DI retained the forensic copies of Steven Brooks' Gmail account and iPhone 8. Forensic copy of Steven Brooks' Gmail account was provided to Kohner, Mann & Kailas, S.C.

6. I also received the Declaration of the plaintiff's forensic consultant, Aaron S. Weiss (Exhibit A), and the Declaration of Michael Knechtel (Exhibit B) for review and was requested to perform analysis related to the file transfer and installation/execution of the forensic tools mentioned in Mr. Weiss's Declaration. Based on my review, Mr. Weiss's and Mr. Knechtel's Declarations are consistent with one another, and none of Mr. Knechtel's statements are inconsistent with or contradicted by Mr. Weiss's findings. Further, every statement made by Mr. Knechtel in his Declaration that can be definitely confirmed or denied by forensic analysis has been confirmed, and the only statements that cannot be conclusively confirmed are matters on which the available data is insufficient to confirm or rebut Mr. Knechtel's claims.

7. On August 28, 2020, DI forensically obtained copies of the HP ProBook 430 G3 computer (Serial Number: 5CD6210QNM) and Western Digital My Passport external hard drive (Serial Number: WX91EC5FEUXP) used by Steven Brooks.

8. I processed the forensic copies utilizing several Industry Standard Forensic tools, including EnCase and Axiom, to examine and analyze file activity and program execution artifacts on Steven Brooks' computer and external hard drive on and after February 2, 2020. My findings are reflected in the paragraphs below.

9. I examined the creation dates of the files on the Western Digital My Passport external hard drive and did not identify any files or folders created after May 31, 2020.

10. I examined the modification and access dates of the files on the Western Digital My Passport external hard drive and did not identify any files or folders which were modified or accessed after May 31, 2020.

11. If any files or folders were accessed or opened on the Western Digital My Passport external hard drive, the access date would be adjusted to reflect the access time. Hence,

the analysis of the creation, modification, and file access dates indicates that no files or folders were accessed or opened after May 31, 2020.

12. I examined the LNK files¹ listed in Par. 22 of Mr. Weiss's declaration (see Table 1 below) related to Libra or Convergen and identified that the files to which LNK files points to were not deleted.

Table 1. LNK Files

LNK File	Original File	File Location
L'Anse - DTE PPA.lnk	L'Anse - DTE PPA.docx	Users\Steven Brooks\Desktop\Toshiba 2014-2018\sbrooks\Desktop\GWF\L'Anse Warden\Power Purchase Agreement\DTE\
CEL - Luminor_102019.lnk	CEL - Luminor_102019.xlsx	Users\Steven Brooks\Desktop\Toshiba 2014-2018\sbrooks\Desktop\GWF\Latvia\DNB\
CE Latvia Group 2014-Q3 2019 Revenue.lnk	CE Latvia Group 2014-Q3 2019 Revenue.xlsm	Users\Steven Brooks\Desktop\Toshiba 2014-2018\sbrooks\Desktop\GWF\Latvia\
LWEC-Convergen Energy WI Pellet Supply Agreement 30Nov2019 dpc.lnk	LWEC-Convergen Energy WI Pellet Supply Agreement 30Nov2019 dpc.docx	Users\Steven Brooks\Desktop\Toshiba 2014-2018\sbrooks\Desktop\GWF\NVE\

13. Analysis of the "Uninstall" registry key² indicates that none of the tools mentioned in Mr. Weiss's Declaration were installed on the computer. This is consistent with Mr. Knechtel's Declaration.

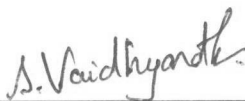
14. Analysis of the "NtfsDisableLastAccessUpdate" key indicates that the file system does not update the last-accessed timestamp of a file/folder. Normally, if a folder is transferred to another device, the last-accessed timestamps of every file in that folder will be adjusted to reflect the time of transfer. On this computer, updates to the last-accessed timestamp of the files/folders are disabled. Therefore, there is insufficient evidence to conclusively determine when copying

¹ LNK file is a shortcut used by Windows as a reference to an original file, folder, or application

² Windows Operating System versions stores their utility to uninstall a program under the registry path "HKEY_LOCAL_MACHINE\SOFTWARE\Microsoft\Windows\CurrentVersion\Uninstall," which could help in determining a list of programs that were installed on a computer.

was initiated of the “Toshiba 2014-2018” folder located on the computer under “Users\Steven Brooks\Desktop\,” as discussed in paragraphs 18 and 19 of Mr. Weiss’s Declaration, was initiated.

I hereby declare, under penalty of perjury, that the above statements are true and correct to the best of my knowledge. Further, affiant sayeth naught.

A handwritten signature in blue ink, appearing to read "A. Vaidhyanth", is written above a horizontal line.

Vaidhyathan Swaminathan